

**J. TRANSFER OF AN ASSET****WAC 388-513-1365 Evaluating the transfer of an asset made on or after March 1, 1997 for long-term care (LTC) services.**

This section describes how the department evaluates a transfer of assets made on or after March 1, 1997, by a client who is applying or approved for LTC services. The department must consider whether a transfer made within a specified time before the month of application requires a penalty period in which the client is not eligible for these services. Refer to WAC 388-513-1366 for rules used to evaluate the transfer of an asset made before March 1, 1997.

- (1) The department disregards the following transfers by the client, if they meet the conditions described:
  - (a) Gifts or donations totaling one thousand dollars or less in any month;
  - (b) The transfer of an excluded resource described in WAC 388-513-1360 with the exception of the client's home, unless the transfer meets the conditions described in subsection (1) (d);
  - (c) The transfer of an asset for less than fair market value (FMV), if the client can provide evidence to the department that satisfies one of the following:
    - (i) An intent to transfer the asset at FMV or other adequate compensation;
    - (i) The transfer is not made to qualify for LTC services;
    - (ii) The client is given back ownership of the asset;
    - (iii) The denial of eligibility would result in an undue hardship.
  - (d) The transfer of ownership of the client's home, if it is transferred to the client's:
    - (i) Spouse; or
    - (ii) Child, who:

- (A) Meets the disability criteria described in WAC 388-511-1105 (1) (b) or (c); or
  - (B) Is less than twenty-one years old; or
- (e) A son or daughter, who:
  - (A) Lived in the home for at least two years immediately before the client's current period of institutional status; and
  - (B) Provided care that enabled the client to remain in the home; or
- (iii) A brother or sister, who has:
  - (A) Equity in the home, and
  - (B) Lived in the home for at least one year immediately before the client's current period of institutional status.
- (f) The transfer of an asset other than the home, if the transfer meets the conditions described in subsection (4), and the asset is transferred:
  - (i) To the client's spouse or to another person for the sole benefit of the spouse;
  - (ii) From the client's spouse to another person for the sole benefit of the spouse;
  - (iii) To the client's child who meets the disability criteria described in WAC 388-511-1105 (1) (b) or (c) or to a trust established for the sole benefit of this child; or
  - (iv) To a trust established for the sole benefit of a person who is sixty-four years old or younger and meets the disability criteria described in WAC 388-511-1105 (1) (b) or (c).
- (g) The transfer of an asset to a member of the client's family in exchange for care the family member provided the client before the current period of institutional status, if a written agreement that describes the terms of the exchange:

- (h) Was established at the time the care began;
  - (i) Defines a reasonable FMV for the care provided that reflects a time frame based on the actuarial life expectancy of the client who transfers the asset; and
  - (ii) States that the transferred asset is considered payment for the care provided.
- (2) When the fair market value of the care described in subsection (1) (f) is less than the value of the transferred asset, the department considers the difference the transfer of an asset without adequate consideration.
- (3) The department considers the transfer of an asset in exchange for care given by a family member without a written agreement as described under subsection (1) (f) as a transfer of an asset without adequate consideration.
- (4) The transfer of an asset or the establishment of a trust is considered to be for the sole benefit of a person described in subsection (1) (e), if the transfer or trust:
  - (a) Is established by a legal document that makes the transfer irrevocable; and
  - (b) Provides for spending all funds involved for the benefit of the person for whom the transfer is made within a time frame based on the actuarial life expectancy of that person.
- (5) When evaluating the effect of the transfer of an asset on a client's eligibility for LTC services received on or after October 1, 1993, the department counts the number of months before the month of application to establish what is referred to as the "look-back" period. The following number of months apply as described:
  - (a) Thirty-six months, if all or part of the assets were transferred on or after August 11, 1993; and
  - (b) Sixty months, if all or part of the assets were transferred into a trust as described in WAC 388-505-0595.
- (6) If a client or the client's spouse transfers an asset within the look-back period without receiving adequate compensation, the result is a penalty period in which

the client is not eligible for LTC services. If a client or the client's spouse transfers an asset on or after March 1, 1997, the department must establish a penalty period as follows:

- (a) If a single or multiple transfers are made within a single month, then the penalty period:
  - (i) Begins on the first day of the month in which the transfer is made; and
  - (ii) Ends on the last day of the number of whole months found by dividing the total uncompensated value of the assets by the statewide average monthly private cost for nursing facilities at the time of application.
- (b) If multiple transfers are made during multiple months, then the transfers are treated as separate events and multiple penalty periods are established that:
  - (i) Begin on the latter of:
    - (A) The first day of the month in which the transfer is made; or
    - (B) The first day after any previous penalty period has ended; and
  - (ii) End on the last day of the whole number of months as described in subsection (6) (a) (ii).
- (7) If an asset is sold, transferred, or exchanged, the portion of the proceeds:
  - (a) That is used within the same month to acquire an excluded resource described in WAC 388-513-1360 does not affect the client's eligibility;
  - (b) That remains after an acquisition described in subsection (7) (a) becomes an available resource as of the first day of the following month.
- (8) If the transfer of an asset to the client's spouse includes the right to receive a stream of income not generated by a transferred resource, the department must apply rules described in WAC 388-513-1330 (6) through (8).

- (9) If the transfer of an asset for which adequate compensation is not received is made to a person other than the client's spouse and includes the right to receive a stream not generated by a transferred resource, the length of the penalty period is determined and applied in the following way:
- (a) The total amount of income that reflects a time frame based on the actuarial life expectancy of the client who transfers the income is added together;
  - (b) The amount described in (9) (a) is divided by the statewide average monthly private cost for nursing facilities at the time of application; and
  - (c) A penalty period equal to the number of whole months found by following subsections (9) (a) and (b) is applied that begins on the latter of:
    - (i) The first day of the month in which the client transfers the income; or
    - (ii) The first day of the month after any previous penalty period has ended.
- (10) A penalty period for the transfer of an asset that is applied to one spouse is not applied to the other spouse, unless:
- (a) Both spouses are receiving LTC services; and
  - (b) A division of the penalty period between the spouses is requested.
- (11) If a client or the client's spouse disagrees with the determination or application of a penalty period, that person may request a fair hearing as described in chapter 388-08 WAC.

**WAC 388-513-1366 Evaluating the transfer of an asset made before March 1, 1997, for long-term care (LTC) services.**

This section describes how the department evaluates the transfer of an asset made before March 1, 1997, by a client who is applying or approved for LTC services. The department must consider whether a transfer made within a specified time before the month of application requires a penalty period in which the client is not eligible for these services. Refer to WAC 388-513-1365 for rules used to evaluate the transfer of an

asset on or after March 1, 1997.

- (1) When evaluating the transfer of an asset made before March 1, 1997, the department must apply rules described in WAC 388-513-1365 (1) through (4) and (7) through (11) in addition the rules described in this section.
- (2) When evaluating the effect of the transfer of an asset on a client's eligibility for LTC services received before October 1, 1993, the department counts the number of months before the month of application to establish what is referred to as the "look-back" period. The following number of months apply as described:
  - (a) Thirty months, if the asset was transferred before August 11, 1993; or
  - (b) Thirty-six months, if the asset was transferred on or after August 11, 1993.
- (3) If a client or the client's spouse transferred an asset without receiving adequate compensation before August 11, 1993, the department must establish a penalty period that:
  - (a) Runs concurrently for transfers made in more than one month in the look-back period; and
  - (b) Begins on the first day of the month in which the asset is transferred and ends on the last day of the month which is the lesser of:
    - (i) Thirty months after the month of transfer; or
    - (ii) The number of whole months found by dividing the total uncompensated value of the assets by the statewide average monthly private cost for nursing facilities at the time of application.
- (4) If a client or the client's spouse transferred an asset without receiving adequate compensation on or after August 11, 1993 and before March 1, 1997, the department must establish a penalty period as follows:
  - (a) If the transfer is made during the look-back period, then the penalty period:
    - (i) Begins on the first day of the month in which the transfer is made; and

	(ii) Ends on the last day of the number of whole months described in subsection (3) (b) (ii).
(b)	If the transfer is made while the client is receiving LTC services or during a period of ineligibility, then the penalty period:
(i)	Begins on the latter of the first day of the month:
	(A) In which the transfer is made; or
	(B) After a previous penalty period has ended; and
(ii)	Ends on the last day of the number of whole months described in subsection (3) (b) (ii).

### CLARIFYING INFORMATION

Transfer rules apply to eligibility for:

- all institutional services in all medical facilities
- hospital stays of thirty days or more
- waived services
- hospice services

Transfer rules do not apply to eligibility for non-institutional medical. The department determines eligibility for non-institutional medical for a client who becomes ineligible for LTC services due to the transfer of an asset.

Transfer rules apply to the following assets (income and resources), those transferred by:

- the client or the client's spouse
- a person with legal authority to act for the client
- a person acting at the direction or request of the client

In addition to assets owned by the client or the client's spouse, countable assets include those to which they are entitled, but do not receive due to waiving their rights of ownership to assets in the following ways:

- waiving pension income
- waiving the right to receive an inheritance
- not accepting or accessing injury settlements
- diverting tort or other court payments
- refusing to take legal action to obtain court ordered payments

Once established, a period of ineligibility runs continuously whether or not the client has a break of thirty consecutive days in the current period of institutional status.

### **WORKER RESPONSIBILITIES**

1. Disregard the transfer of an asset if the asset is returned to the client or to the client's spouse or if the transfer occurred before the look back period.
2. Disregard the transfer of a client's home only if subsection WAC 388-513-1365 (1) (d) applies.
3. Evaluate all other transfers as described in WAC 388-513-1365 and WAC 388-513-1366 according to the date of the transfer. Use these rules to determine whether to disregard the transfer or to establish a period of ineligibility.
4. Use the life expectancy table in Appendix 5 as appropriate.
5. Refer to the definition of "undue hardship" in WAC 388-513-1301 as appropriate.
6. For applications, allow the client the opportunity to withdraw the application. If the client does so, do not establish a period of ineligibility.
7. For applications, determine eligibility for non-institutional medical when denying LTC services for the transfer of an asset.
8. For active cases that require a period of ineligibility because of the transfer of an asset, continue the client's non-institutional medical until the following steps have been taken:
  - Send a D01C notice to close the assistance unit (AU) for LTC services, and inform the client that non-institutional medical will continue until eligibility is re-determined. Include an eligibility review form
  - Set an alert for ten days for the return of the review. If the client does not respond or provide the necessary information, close the AU according to the advance and adequate notice rules



- If the client returns the eligibility review form with the necessary information, determine eligibility for other programs as appropriate

**NOTE:** If the case record contains all of the information needed to re-determine eligibility for other medical programs, do not require the client to complete an eligibility review.

9. When evaluating the transfer of an asset in which it appears the client has been exploited, consider making a referral to Adult Protective Services.
10. Follow necessary supplemental accommodation (NSA) procedures described in chapter 388-200 WAC when appropriate.

**Transfers with special circumstances:**

1. If an institutionalized spouse is subject to a period of ineligibility, apply the following when the community spouse attains institutional status and is eligible for LTC services:
  - Determine how to apply the period of ineligibility with the least negative impact upon the couple. If the cost of care for one spouse is higher than the other spouse, consider applying the bulk of the remaining months to the spouse whose cost of care is the lesser amount, or
  - Divide the remaining period of ineligibility between the spouses
2. If the community spouse applies for LTC services or non-institutional medical, consider resources previously transferred from the institutionalized spouse to the community spouse as the separate resources of the community spouse.
3. If the community spouse dies, determine whether the institutionalized spouse will inherit any resources. If it appears the institutionalized spouse will do so, determine when the inheritance should take place and tickle for proper action at that time.
4. Follow these steps when establishing a period of ineligibility for the transfer of an asset on or after March 1, 1997:
  - a. For all assets other than annuities, determine the uncompensated value of the transferred resource. This is done by subtracting the compensation received for an asset from the equity value of the asset.

- b. Divide the uncompensated value by the statewide average monthly cost of private nursing facilities at the time of application.
  - c. Round the result down to the nearest whole month. The result is the number of months of the period of ineligibility.
  - d. Notify the client of the period of ineligibility. A period of ineligibility starts on the first day of the month in which the client transferred the asset or after a month in which a prior period of ineligibility ends, whichever is later.
5. If the ineligible client receives SSI:
  - a. Continue Title 19 Medicaid.
  - b. Set an alert for ten days to allow time for a FH request.
  - c. If a FH is requested, take no action until you have a decision from the ALJ. If the ALJ decides the period of ineligibility is appropriate or if no hearing is requested, send a memo to the office of Social Security with the following information:
    - The clients name and SSN
    - A statement that the client is ineligible for institutional care due to a transfer of resources and the month and year the client will again be eligible for institutional care
6. For the transfer of an asset before March 1, 1997, refer to WAC 388-513-1366.
7. Follow necessary supplemental accommodation (NSA) procedures described in chapter 388-200 WAC when appropriate.

## **ACES PROCEDURES**

1. Refer to Chapter K 20.16.4 in the ACES User Manual. While following those procedures, the information below is important to remember.
2. Check the ACES processing alternatives list (PAL) before entering data on the TRAN screen to see if a workaround is still needed to compute the correct period of ineligibility. Staff are currently required to compute the correct number of months and to enter this information manually. Policy requires that the number of months be rounded down to the last whole number. Otherwise, ACES will

inappropriately round the number upward and include a partial number in its calculation. Enter a transfer amount based on the correct number of months times the statewide private NF rate in the Sale Value field, if this PAL remains in effect.

3. When the transfer of an asset is not exempt and a resulting period of ineligibility is confirmed, the penalty information is displayed on the STAT screen. ACES will not allow approval for LTC services until the penalty period has expired and will not allow data on the STAT screen to be deleted once it has been confirmed. Be certain that the transferred asset will not be returned to the client before confirming the transfer in ACES.